

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1328 of 1984

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

NARAYAN DOLATRAM BHAIYA

Appearance:

MR ST MEHTA ADDL. PP for Petitioner

MR AMIT J SHAH for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/02/97

ORAL JUDGEMENT

This appeal arises of an order of acquittal recorded by the learned Metropolitan Magistrate, Ahmedabad on 30th July, 1984 in Criminal Case No. 2569 of 1980.

2. The accused Narayan Bhaiya was, at the relevant

time, a Senior Clerk in the office of the Mamlatdar. He was entrusted with the records and financial matters of survey training class being conducted in Sardar College. It was alleged that the accused had collected the amounts of fees and fine from the students. Out of the said amount, a sum of Rs. 1,213.50 ps. were shown to have been deposited in the Government Treasury by 14 Challans. Upon investigation, it was found that the seal of the bank and the signature of the bank officials on the said challans were forged and the amount was not deposited in the Government Treasury at all. Said amount was, however, entered as cash expenditure in the cash register of the training class. Thus, the accused is alleged to have misappropriated said sum of Rs.,1213.50 ps.

3. The prosecution has failed to prove that the said entries were made by the accused in his handwriting. The prosecution has not even examined any officer of the bank to prove that the seal of the bank and the signature of the bank officer on the disputed challans were forged. The handwriting expert has deposed that the challans were filled in by the accused. However, he has not confirmed that the said challans were signed by the accused himself. It has also not been proved that the entries in the cash book were made by the accused in his own hand writing. In view of the above, the learned Metropolitan Magistrate, Ahmedabad has rightly held that the prosecution failed to establish the guilt against the accused. The accused has, therefore, rightly been acquitted by the learned Metropolitan Magistrate, Ahmedabad. This appeal is, therefore, dismissed.

4. Be it noted that this appeal was admitted to final hearing by this Court on 18th December, 1984 and was dismissed for non-prosecution on 31st July, 1986. The appeal was, thereafter, restored on files of the Court on 22nd April, 1992. In the mean time, original records from the trial Court was sent back on 9th November, 1987 and in view of the provisions regarding maintenance and destruction of the records contained in the Criminal Manual, High Court of Gujarat, the records were destroyed by the trial Court in the month of May, 1994. It appears that after the appeal was restored on 22nd April, 1992, Registry of this Court did not call for the records and proceedings from the trial Court though it issued a writ of restoration of the appeal on 28th April, 1992. Thus, for want of proper instruction, the trial Court failed to send records and proceedings to the High Court after restoration of the appeal and destroyed the records in accordance with the rules made in that behalf. In absence of the original records also, the

contentions raised in this appeal cannot be examined.

*Vyas